

State of California
California Regional Water Quality Control Board
Santa Ana Region
Staff Report
April 18, 2008

ITEM: 15

SUBJECT: Order No. R8-2008-0052 Affirming Mandatory Penalty Complaint No. R8-2008-0027, James Cassou dba All Benz and Beemer Auto Parts, Orange, Orange County

BACKGROUND

On March 17, 2008, the Assistant Executive Officer issued Mandatory Penalty Complaint (MPC) No. R8-2008-0027 to James Cassou dba All Benz and Beemer Auto Parts (All Benz and Beemer) for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). In the MPC (attached), the Assistant Executive Officer proposed an assessment of \$5,000 for the alleged violation.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt, reject or modify the proposed order imposing a mandatory penalty on All Benz and Beemer.

MPC No. R8-2008-0027 was issued by the Assistant Executive Officer to All Benz and Beemer for failing to obtain coverage under the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee with the State Water Resources Control Board. All Benz and Beemer, located at 1436 North Manzanita Street in Orange, primarily dismantles motor vehicles for the purpose of selling parts, and these activities are described by Standard Industrial Classification (SIC) code 5015.

On September 17, 2007, Board staff (staff) contacted the facility and was informed by Mr. Russell Duncan (facility contact) that the previous permittee (A Professional – WDID 8 301014481) had sold its business to All Benz and Beemer in April 2007. Staff informed Mr. Duncan that the permit is non-transferable and that All Benz and Beemer was required to obtain coverage under the General Permit. On September 19, 2007, staff e-mailed a copy of the General Permit requesting that a NOI be submitted as soon as possible.

Since All Benz and Beemer did not respond to the email request, a Notice of Non-Compliance (NNC) was issued on October 26, 2007, via certified mail to All Benz and Beemer requiring them to submit a NOI for coverage under the General Permit. The

return receipt showed it was received on October 27, 2007. When Board staff received no response to the first NNC, a second NNC was issued on December 3, 2007, again by certified mail, and was received by the facility on December 5, 2007. In both NNCs, Board staff requested submittal of a Notice of Intent (NOI) for coverage under the General Permit. Both NNCs also identified the mandatory penalty for failure to submit a NOI, and the second NNC required that the NOI be submitted by December 24, 2007.

To confirm that the SIC code accurately described the processes taking place at All Benz and Beemer, on January 22, 2008, staff visited the site and spoke with Mr. Cassou. At that time, Mr. Cassou claimed that the previous permit for the site (A Professional – WDID 8 30I014481) should have been applied to All Benz and Beemer. Staff informed Mr. Cassou that this issue had been previously discussed with Mr. Duncan and that Mr. Duncan was informed that All Benz and Beemer is a new facility operator, thus a new permit is required.

On April 3, 2008, State Board received an NOI from All Benz and Beemer and issued a WDID number (8 30I021516) for the facility.

All Benz and Beemer failed to obtain coverage under the General Permit within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33 requires that the Regional Board impose a mandatory penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require.

After consideration of these factors, the Assistant Executive Officer proposed that a mandatory penalty be imposed on All Benz and Beemer in the amount of \$5,000.

RECOMMENDATION

Board staff recommends that the Board adopt Order No. R8-2008-0052 affirming the assessment of \$5,000 specified in the Mandatory Penalty Complaint.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2008-0052
)	for
James Cassou)	Mandatory Penalty
All Benz and Beemer Auto Parts))	
1436 North Manzanita Street)	
Orange, CA 92867-3604)	
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The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 18, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0027, dated March 17, 2008, and on the recommendation for the imposition of mandatory penalties pursuant to Water Code Sections 13399.30(c)(2) and 13399.33(a) in the amount of \$5,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit). The General Permit requires All Benz and Beemer Auto Parts (All Benz and Beemer) to gain permit coverage prior to the start of operations. Board staff sent two certified Notices of Noncompliance (NNCs) to All Benz and Beemer, the first one on October 26, 2007 and the second one on December 3, 2007. These NNCs notified All Benz and Beemer that the facility is required to gain coverage under the General Permit and that there is a mandatory penalty for not obtaining coverage under the General Permit by filing a Notice of Intent (NOI). The second NNC required All Benz and Beemer to submit the NOI by December 24, 2007. Prior to December 24, 2007, All Benz and Beemer was informed by phone to submit a NOI. On April 3, 2008, State Board received an NOI from All Benz and Beemer and the facility was issued WDID No. 8 30I021516.
2. All Benz and Beemer failed to submit a NOI within 60 days from the date of the original NNC.
3. Water Code Section 13399.30 requires the Board to impose penalties described in subdivision (a) of Section 13399.33 if a discharger fails to submit the required NOI to the Board within sixty (60) days from the date on the original NNC.
4. Water Code Section 13399.33(a) requires the Board to assess a mandatory minimum penalty of five thousand dollars (\$5,000) for failure to obtain coverage under the General Permit.

5. On March 17, 2008, the Assistant Executive Officer issued Mandatory Penalty Complaint No. R8-2008-0027 to All Benz and Beemer proposing that the Board impose a penalty of \$5,000 on All Benz and Beemer for the violations cited above.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13399.33(a), a mandatory penalty shall be imposed on All Benz and Beemer, in the amount of \$5,000, as proposed in Complaint No. R8-2008-0027 for the violations cited, payable as set forth below.

1. All Benz and Beemer shall pay \$5,000 to the State Water Resources Control Board by May 19, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 18, 2008.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2008-0027
)	for
James Cassou)	Mandatory Penalty
All Benz and Beemer Auto Parts)	
1436 North Manzanita Street)	
Orange, CA 92867-3604)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on April 18, 2008, at the City Council Chambers of Loma Linda, in the City of Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Penalty Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Most industrial facilities that discharge storm water associated with industrial activities are required to get coverage under the State's General Permit for Storm Water Discharges Associated Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facilities that are required to get permit coverage are listed by industrial category and by Standard Industrial Classification (SIC) codes in 40 CFR Section 122.26(b)(14) and in Attachment 1 of the General Permit.
5. All Benz and Beemer Auto Parts (hereinafter All Benz and Beemer) primarily dismantles motor vehicles for the purpose of selling parts, and these activities are described by SIC code 5015. The facility, located at 1436 North Manzanita Street, Orange, is owned by James Cassou and has been in business for several months. Coverage under the general permit is mandatory for automobile dismantling operations and coverage must be obtained prior to the start of operations. Mr.

Cassou has been operating at this site without filing a Notice of Intent (NOI) to obtain coverage under the State's General Permit.

6. On September 17, 2007, Board staff (staff) contacted the facility and was informed by Mr. Russell Duncan (facility contact), that the previous permittee (A Professional – WDID 8 30I014481) had sold its business to All Benz and Beemer in April 2007. Staff informed Mr. Duncan that the permit is non-transferable and that All Benz and Beemer is required to obtain coverage under the General Permit. On September 19, 2007, staff e-mailed a copy of the General Permit requesting that a NOI be submitted as soon as possible.
 5. A Notice of Non-Compliance (NNC) was issued on October 26, 2007, via certified mail to All Benz and Beemer requiring them to submit a NOI for coverage under the General Permit. The return receipt showed it was received on October 27, 2007. When Board staff received no response to the first NNC, a second NNC was issued on December 3, 2007, again by certified mail, and was received by the facility on December 5, 2007. In both NNCs, Board staff requested submittal of a Notice of Intent (NOI) for coverage under the General Permit. Both NNCs also identified the mandatory penalty for failure to submit a NOI, and the second NNC required that the NOI be submitted by December 24, 2007.
 6. On January 22, 2008, staff spoke with Mr. Cassou to discuss the two NNCs that were issued to All Benz and Beemer. Mr. Cassou claimed that the previous permit for the site (A Professional – WDID 8 30I014481) should have been applied to All Benz and Beemer. Staff informed Mr. Cassou that this issue had been previously discussed with Mr. Duncan and that he was informed that All Benz and Beemer is a new facility operator, thus a new permit is required.
 7. Pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required NOI to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent, the Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
 8. Pursuant to Section 13399.33(a) of the California Water Code, the Regional Board shall administratively impose a mandatory penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require.
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9. After consideration of these factors, the Assistant Executive Officer proposes that a mandatory penalty be imposed on Mr. James Cassou by the Board in the amount of \$5,000.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount proposed under Paragraph 9. These documents should be mailed to this office in the enclosed pre-printed envelope.

If you have any questions, please contact Michelle Beckwith at (951) 782-4433, or Mark Smythe at (951) 782-4998. For legal questions, contact Reed Sato, Director of Office of Enforcement at (916) 341-5889.

3/17/08
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

In the matter of:)
)
James Cassou)
All Benz and Beemer Auto Parts)
1436 North Manzanita Street)
Orange, CA 92867)
_____)

Complaint No. R8-2008-0027
for
Mandatory Penalty

WAIVER OF HEARING

I agree to waive my right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0027.

I have enclosed a check made payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up my right to be heard and to argue against allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

Date

James Cassou dba All Benz and Beemer Auto Parts